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## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

## Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

FLIPPO *v.* COMMONWEALTH.

Jan. 24, 1918.

[94 S. E. 771.]

1. Infants (§ 20\*)—Cruel Treatment of Child—Evidence.—Evidence held insufficient, though considered on demurrer, to sustain verdict that defendant was guilty of overworking and cruelly treating a child 13 years old under his control.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 466.]

2. Criminal Law (§ 516\*)—Evidence—Statements as Confessions.—In a prosecution for cruelly treating and overworking a child of 13 years in defendant's control, statements by the boy as to his treatment, repeated by a state's witness to defendant, who either denied or explained them, were not confessions.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 95.]

3. Reformatories (§ 7\*)—Custody of Child from Children's Home Society—Duty of Correction.—Where the superintendent of the Children's Home Society placed an incorrigible boy with defendant, the boy was rightfully put to work on defendant's farm, and, if his conduct was such as to require reasonable and moderate correction for his welfare, it was the right and duty of defendant to administer it.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 760.]

Error to Circuit Court, Henrico County.

W. F. Flippo was convicted of an offense, and he brings error. Reversed.

*Geo. P. Haw*, of Richmond, for plaintiff in error.  
*The Attorney General*, for the Commonwealth.

WEBB *v.* COMMONWEALTH.

Jan. 24, 1918.

[94 S. E. 773.]

1. Indictment and Information (§ 32 (3)\*)—Concluding Clause.—Indictment is not invalid because, to the concluding clause, provided

\*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

by Const. § 106, "against the peace and dignity of the commonwealth," are added the words "of Virginia."

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 398.]

**2. Criminal Law (§ 822 (1)\*)—Instructions—Consideration as a Whole.**—Instructions must be read as a whole.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

**3. Criminal Law (§ 822 (7)\*)—Instructions—Misleading Instructions.**—An instruction in larceny, in which the issue was intent, stating that one is presumed to have intended the necessary consequences of his act, cannot be considered misleading, when further stating that the jury are the judges of the evidence, and can draw such deductions from the entire evidence as in their judgment should be drawn therefrom, and act on the same in finding their verdict, especially where followed by other instructions, that the commonwealth has the burden of proving beyond all reasonable doubt every allegation of the indictment, and that, if they shall have any rational doubt as to any important fact necessary to convict, they must give defendant the benefit thereof, and that his intent at the time of taking the article is a material fact, and that before he can be convicted the jury must be convinced beyond all reasonable doubt that, when he took it, he did so intending wholly to deprive the owner of it, and without an intention to return it.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 729.]

**4. Criminal Law (§ 304 (6)\*)—Evidence—Judicial Notice.**—The court will take judicial notice of the charter of a municipal corporation, locating it in a certain county.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 645.]

**5. Larceny (§ 57\*)—Intent—Circumstantial Evidence.**—The felonious intent in the original taking must generally be inferred from circumstances.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 230.]

**6. Larceny (§ 57\*)—Intent—Sufficiency of Evidence.**—The circumstances, which the evidence tended to show, that the horse was secretly and clandestinely taken in the nighttime, in the absence of the owner, without any claim of right, and that no act had been done by defendant, down to the time of his arrest, to indicate a purpose to restore it to the owner, if believed by the jury to be established, were sufficient to warrant a finding of felonious taking—that is, with no intent to return it—notwithstanding defendant's testimony of taking with intent to return.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 230.]

**7. Criminal Law (§ 1159 (2)\*)—Appeal—Review of Verdict.**—Plaintiff in error's case being, under Code 1904, § 3484, before the reviewing court as on demurrer to the evidence, the verdict will not

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\*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

be disturbed, when there is sufficient evidence, so considered, to support it.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 576.]

Error to Circuit Court, Giles County.

Phillip Webb was convicted, and brings error. Affirmed.

*W. B. Snidow*, of Pearisburg, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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KIRBY *v.* BOOKER.

Jan. 24, 1918.

[94 S. E. 775.]

**Creditors' Suit (§ 51\*)—Sale—Validity.**—In a creditor's suit to subject the real and personal estate of a decedent to the payment of his debts, where the report of a commissioner, to whom there was a reference to take an account of the real and personal estate and of the debts, liens, and demands against it, did not accurately inform the court of the amount or value of the personal estate, or report the assets or the indebtedness of the estate, or the date and priorities thereof, though there were both liens and secured debts, so that the court could not determine to what extent it would be necessary to resort to the real estate, it was error to decree a sale of the land for the payment of the indebtedness, especially where one of the exceptions to the report of sale was an entirely inadequate price, not passed upon by the court, so that the reviewing court could not tell whether it sold for a fair price or not, even though the debts exceeded the value of the property so that no heir can be benefited, and though no creditor complained.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 812.]

Appeal from Circuit Court, Halifax County.

Creditors' suit by R. I. Overby against C. G. Kirby's administrator and others. From a decree refusing to confirm and setting aside a sale upon objections by M. B. Booker, guardian ad litem, H. E. Kirby, purchaser, appeals. Affirmed.

*Easley & Bouldin*, of Houston, for appellant.

*John Martin*, of Houston, for appellee.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.